IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

I.T.R. No. 23 of 2002
DATE OF DECISION: 14.8.2007

The Commissioner of Income-tax, Jalandhar

…Applicant

Versus

Shri K.D. Prabhakar (HUF)

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjiv Bansal, Advocate,
for the applicant-revenue.

M.M. KUMAR, J.

This order shall dispose of I.T.R. Nos. 23 and 26 of 2002, which emerge from the common order dated 26.11.1997, passed in respect of assessments years 1976-77 and 1980-81. The facts are being referred from ITR No. 23 of 2002. The details in respect of the abovementioned references are as under:-

Sr. No.	ITR Nos.	Arising out of	Assess-ment Year	Date of the order of the ITAT, Amritsar Bench, Amritsar
1.	23 of 2002	ITA No. 489(ASR)/1996	1976-77	26.11.1997
2.	26 of 2002	ITA No. 493(ASR)/1996	1980-81	26.11.1997

At the instance of the revenue, the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar (for brevity, 'the Tribunal'), has referred the following question of law for the opinion of this Court by exercising jurisdiction under Section 256(1) of the Income-tax Act, 1961 (for brevity, 'the Act'):-

> "Whether on the facts and in the circumstances of the case, the Ld. ITAT is right in law in reversing the order of the Ld. DCIT (A) who upheld the order of the A.O. passed u/s 154 holding that no mistake was apparent from records in so far as charging or interest u/s 139(8) was concerned, for the asstt. year 1976-77?"

Facts may briefly be noticed. The assessment in this case was originally completed in respect of the assessment year 1976-77 on a total income of Rs. 9,990/- plus agricultural income of Rs. 400/- and in respect of assessment year 1980-81 on total income of Rs. 8,240/- plus agricultural income of Rs. 700/-. Subsequently, in the course of assessment for the assessment year 1990-91, it came to the notice of the Assessing Officer that the assessee had received additional compensation as also interest thereon as a result of the judgment dated 12.7.1988 passed by this Court by granting enhanced compensation and interest on account of compulsory acquisition of the land belonging to the assessee, by the State Government. The assessee filed return of income for the assessment year 1984-85 to 1990-91 disclosing therein interest income as also appropriate amount of capital gain arising out of the said compulsory acquisition of land. The Assessing Officer sought to assess interest on accrual basis as

interest was allowed by this Court right from assessment year 1974-75. This exercise was supported by the judgment of Hon'ble the Supreme Court in the case of **Rama Bai v. C.I.T., (1990) 181 ITR 400**. However, the assessee resisted and insisted for reassessment of interest accruing from the assessment years 1984-85 onwards. As a consequence, proceedings under Section 147 of the Act were initiated and notices were served under Section 148 on the assessee on 13.1.1992 for both the assessment years in addition to others. The assessee filed return declaring income of Rs. 35,040/- plus agricultural income of Rs. 400/- in respect of the assessment year 1976-77 and for the assessment year 1980-81 he filed the return declaring income of Rs. 33,290/- plus agricultural income of Rs. 700/-. Interest under Section 139(8) was also charged at Rs. 2,610/- and Rs. 19,764/- respectively. Thereafter, the assessee moved an application under Section 154 of the Act asserting therein that the interest was not chargeable by citing the orders passed in the cases of co-owners. The application was rejected by the Assessing Officer vide his order dated 12.9.1995. The assessee challenged the order of the Assessing Officer before the Deputy Commissioner of Income-tax (Appeals), Jalandhar [DCIT (A)], who dismissed the appeal vide his order dated 30.3.1996.

Feeling aggrieved, the assessee challenged the orders dated 30.3.1996 passed by the DCIT (A) before the Tribunal. The Tribunal allowed the appeal by placing reliance on a clarification issued by the Central Board of Director Taxes (CBDT) as to when the

amendment of Explanation-2 appended to Section 139(8) of the Act was to be applied. The clarification in clear terms stated that it was to apply from the assessment year 1984-85. The observation of the Tribunal in paras 4 and 5 reads as under:-

> "4. It is quite clear that so far as section 139(8) is concerned, Explanation-2 was incorporated w.e.f. 1.4.1985. It is also quite clear where the cases are reopened u/s 147, the CBDT has given clarification regarding the years from which the amendment of Explanation-2 is applicable and accordingly the amendment is applicable from the assessment year 1984-85. Similarly regarding charging of interest under sec. 215/217, the section 215(6) related to the assessment under sec. 147, the power to charge interest under sec. 216 & 217 is effective from 1.4.1985 i.e. from assessment year 1985-86. The CBDT circular reproduced in 152 ITR 29 (Statutes) at page 37, makes it clear that in case assessment is made under section 147 for the first time then interest could be charged under sec. 215/217 from assessment year 1985-86 onwards. Apparently, if facts are so, which appears to be as per statement made by the appellant, before the DCIT(A), then a mistake is apparent from law and as such the A.O. is bound to rectify charging of interest because it does not give him power to charge interest under section 139

and 215/217 for the assessment years 1974-75 to 1982-83 because return has been filed first time in response to show cause notice under section 147 of the I.T. Act. The AO is directed to decide the application of rectification accordingly.

5. The appeals are accepted."

Mr. Sanjiv Bansal, learned counsel for the revenue has not been able to point out any legal infirmity in the view taken by the Tribunal. It is evident from the impugned order that the Tribunal has placed reliance on Explanation-2 to Section 139(8) of the Act, which was added by the Taxation Laws (Amendment) Act, 1984, with effect from 1.4.1985. It may be pertinent to make a reference to Explanation-2 appended to Section 139(8) of the Act and the same reads as under:-

"Explanation 2: Where, in relation to an assessment year, an assessment is made for the first time under section 147, the assessment so made shall be regarded as a regular assessment for the purposes of this sub-section.

(b) Where as a result of an order under section 147 or section 154 or section 155 or section 250 or section 254 or section 260 or section 262 or section 263 or section 264, the amount of tax on which interest was payable under this sub-section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and –

(i) in a case where the interest is increased, the Income-tax Officer shall serve on the assessee, a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall apply accordingly;

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded."

The aforementioned Explanation was added w.e.f. 1.4.1985 and the circular issued by the CBDT shows that it was to apply in relation to the assessment year 1985-86 and subsequently. The relevant part of the circular issued by the CBDT, as reported in (1985) 152 ITR 29 at page 37, reads as under:-

"15.4 Under the existing provisions contained in clause (b) of section 139(8), interest payable by an assessee for delay or default in furnishing the return of income is required to be reduced in cases where the tax on which the interest was payable has been reduced as a result of an order under sections 154, 155, 250, 254, 260, 262 or section 264 of the Act. This clause has been substituted by a new clause (b) which provides that where as a result of any of the orders specified in that clause, the amount

of tax on which interest was payable *has been increased or reduced*, the interest shall be increased or reduced, accordingly. In a case where the interest is increased, the Income-tax Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such notice of demand shall be deemed to be issued under section 156 of the act and the provisions of the Act shall apply, accordingly. In cases where such interest is reduced, the excess interest paid, if any, shall be refunded to the assessee.

15.5. These amendments take effect from 1st April, 1985, and will, accordingly, apply in relation to the assessment year 1985-86 and subsequent years."

There is, thus, no doubt left that no notice with respect to the assessment years 1976-77 and 1980-81 could have been issued and the view taken by the Tribunal is unassailable. Accordingly, we uphold the view taken by the Tribunal.

In view of the above, the question is answered against the revenue and in favour of the assessee.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

August 14, 2007
Pkapoor

FIT FOR INDEXING